IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1218 OF 2006

Superb Minerals Pvt.Ltd. .. Petitioner.
V/s.
Income Tax Officer,
Range 2(1), Nashik & Others .. Respondents.

Mr.Atul K. Jasani for the petitioner.
Mr.B.M. Chatterjee with Mrs.P.P. Bhosale for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 20TH MARCH, 2006.

P.C. :

Mr.A.K. Jasani, the learned counsel for the petitioner submits that by the impugned notice dated 29th March, 2005 issued under Section 148 of the Income Tax Act, 1961, in the prima facie opinion of the Assessing Officer, there is escapement of income in the sum of Rs.2,68,338/- for the assessment year 1998-99. He submits that the issuance of notice under Section 148 is beyond four years and the escaped income falls much below the threshold limit under Section 149(1)(b). The learned counsel would submit that the Assessing Officer has wrongly treated the interest income of Rs.2,68,338/- as gross interest income without giving benefit of deduction of expenditure having a nexus with such receipt. He relied upon the judgment of Special Bench of the Income Tax Appellate Tribunal in the case of Lalsons

Enterprises V/s. Deputy Commissioner of Income Tax [(2004) 89 ITD 25]. The learned counsel submitted that despite categorical objection raised in response to the show cause notice, the Assessing Officer did not deal with this objection in the order dated 8th February, 2006. The learned counsel would submit that the notice dated 29th March, 2005 under Section 148 suffers from error of jurisdiction.

2. Having considered the submissions of the learned counsel for the petitioner, we are of the view that the impugned notice cannot be said to suffer from patent lack of jurisdiction. It needs to be emphasized that merely because the Assessing Officer has disposed of the petitioners objections to the notice under Section 148 of the Income Tax Act, 1961 by speaking order, in the garb of filing writ petition, correctness of such order cannot be challenged as if this Court were exercising appellate powers.

3. It would be seen that in its return filed for the assessment year 1998-99, the petitioner reduced its income of Rs.5,95,616/- by 90% from the profit of business resulting in loss from exports. The Assessing Officer was of the prima facie view that the deductions under Section 80HHC so computed by the

petitioner resulted in escapement of income of Rs.2,68,338/-. As to whether the expenditure claimed by the petitioner has a nexus with the interest receipt while computing the business profit and that there is no escapement of income shall obviously be open to be raised by the petitioner at the time of re-assessment and if the Assessing Officer passes an order adverse, the matter can be carried in appeal. We are satisfied that no case for invocation of extra ordinary jurisdiction under Article 226 of the Constitution of India is made out.

4. The writ petition is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)